



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 07/24/01

AGENDA ITEM 10

WORK SESSION ITEM

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Local Improvement District No. 18, Downtown Sidewalk and Streetscape Rehabilitation: Conduct the Public Hearing, Tabulate the Ballots, Form Local Improvement District No. 18 if the Majority of the Ballots Approves

RECOMMENDATION:

It is recommended that the City Council conduct the public hearing and approve the attached resolutions that:

1. Approve the negative declaration for the project;
2. If there is no majority protest against the assessment, approve the final Engineer's Report, confirm the assessment, and order the work;
3. Authorize the City Manager to amend the professional services agreement with Berryman & Henigar to add an additional \$403,000 for a total not-to-exceed amount of \$505,000; and
4. Appropriate \$430,000 from the Redevelopment Agency for design and administration costs.

BACKGROUND:

On June 5, 2001, the City Council preliminarily approved the LID #18 Engineer's Report and set the dates for a public meeting and this public hearing. On June 27, 2001, a public meeting was held to provide information on the proposed district formation and to allow affected property owners an opportunity to speak. Twenty-two persons attended the meeting, mostly property owners or property-owner representatives. The majority of the comments related to the appropriateness of the selection of lot size instead of front footage as the basis of assessment. Staff explained that the improvements were intended to enhance the entire Downtown area and result in increased revenues to all the businesses. The ability for a business to generate income is dependent on parcel size; therefore, assessments should be spread among all the properties, based on their lot size.

There were also questions about the RDA contribution. It was explained that the RDA will contribute \$600,000, that the City/RDA will be assessed \$2.1 million based on parcel sizes, and that the RDA will cover its own financing costs of approximately \$400,000 all for a total RDA contribution of \$3.1 million.

DISCUSSION:

A project initial study and negative declaration were prepared, posted, and are attached. No comments were received on the initial study or negative declaration.

All ballots must be received by mail or hand-delivered to the City Clerk prior to the close of the public hearing tonight. Once the City Clerk has tabulated the ballots, if the majority of the ballots weighted in proportion to the amount of the proposed assessment are in favor of the assessment, the City Council should then approve the final Engineer's Report, confirm the assessment, and order the work. Also, in order to have construction begin in April 2002, final design work will need to be funded.

On January 11, 2000, the City Council authorized an agreement (in an amount not to exceed \$92,000) with Berryman & Henigar who, in concert with their landscape architect Callander Associates, prepared preliminary plans and assessment-spread information for the district. On May 5, 2001, the City Council authorized the City Manager to amend the agreement to add an additional \$10,000. If the majority of the weighted ballots are in favor of the assessment, staff is requesting authorization to increase the Berryman & Henigar agreement by an additional \$403,000 for the preparation of the final plans, specifications, and cost estimates, including the structural design of the cellar closures and the selection of design level details for the entry monument, seat walls, columns, signage, and other street furniture. Staff is also requesting that \$430,000 in RDA funds be appropriated to a new fund established for LID #18 to cover these design and administration costs. Financing to provide the full RDA contribution will be addressed in early September.


SCHEDULE:

Assuming the approval of the district this evening, the following schedule is anticipated:

Award Contract	March 2002
Begin Construction	April 2002
Complete Construction	September 2003
Assessments Appear on Property Tax Bills	November 2003

Staff will meet with the property owners, before the final plans and specifications are prepared, to discuss the proposed placement of trees and street furniture, and with the business owners to discuss the construction phasing, so that business disruption is kept to a minimum.

Prepared by:



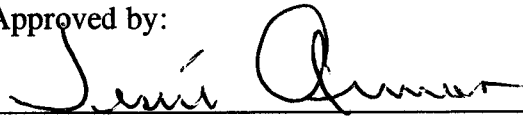
Robert A. Bauman, Deputy Director of Public Works

Recommended by:



Dennis L. Butler, Director of Public Works

Approved by:



Jesús Armas, City Manager

Exhibits: Exhibit A: Engineer's Report for Local Improvement District No. 18
Exhibit B: Initial Study and Negative Declaration

DUE TO THE LENGTH OF REFERENCED EXHIBITS, THEY ARE NOT AVAILABLE FOR WEBSITE VIEWING. THE AGENDA REPORT IN ITS ENTIRETY IS AVAILABLE FOR REVIEW IN THE CITY CLERK'S OFFICE AND AT THE MAIN LIBRARY.

DRAFT

CITY OF HAYWARD

RESOLUTION NO. _____

**A RESOLUTION ADOPTING ENGINEER'S REPORT,
CONFIRMING THE ASSESSMENT, ORDERING THE WORK
AND ACQUISITIONS, AND DIRECTING ACTIONS WITH
RESPECT THERETO**

WHEREAS, on May 1, 2000, this Council adopted Resolution No. 01-059, A Resolution of Intention to Make Acquisitions and Improvements, and in it directed the Engineer of Work to make and file a report in writing in accordance with and pursuant to the Municipal Improvement Act of 1913;

WHEREAS, the report was made and filed and considered by this Council and found to be sufficient in every particular, whereupon it was determined that the report should stand as the Engineer's Report for all subsequent proceedings under and pursuant to the Resolution of Intention, and July 24, 2001, at the hour of 8:00 o'clock p.m., in the regular meeting place of this Council, City Council Chambers, 777 B Street, Hayward, California, was appointed as the time and place for a public hearing to take testimony and to receive protests, in relation to the proposed acquisitions and improvements, for tabulation of assessment ballots, and final action on the Engineer's Report, notices of which hearing and assessment ballots were mailed as required by law; and

WHEREAS, the hearing was held, and all persons interested desiring to be heard were given an opportunity to be heard, and all matters and things pertaining to the acquisitions and improvements were fully heard and considered by this Council, and any protests, both written and oral, were duly heard, considered, and overruled, and this Council thereby acquired jurisdiction to order the acquisitions and improvements and the confirmation of the diagram and assessment to pay the costs and expenses thereof; and

WHEREAS, the City Council of the City of Hayward duly considered all information and evidence necessary for it to exercise its independent judgment regarding the environmental documents and hereby adopts the negative declaration for the project.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Hayward as follows:

1. No Majority Protest: Protests Overruled. It is hereby determined that, upon the conclusion of the public hearing, and after tabulation of the assessment ballots submitted, no majority protest against the assessment existed because the assessment ballots submitted in

opposition to the assessment did not exceed the ballots submitted in favor of the assessment. In tabulating the ballots, they were weighted according to the proportional financial obligation of the affected properties. The protests, if any, against the proposed acquisitions and improvements or the grades at which the work is proposed to be done, as a whole or as to any part thereof, or against Local Improvement District No. 18 (Downtown Sidewalk and Streetscape Rehabilitation) (the "Assessment District"), or the extent thereof to be assessed for the costs and expenses of the acquisitions and improvements, as a whole or as to any part thereof, or against the engineer's estimate of costs and expenses, in whole or in part, or against the maps and descriptions, in whole or in part, or against the diagram or the assessment to pay for the costs and expenses thereof, in whole or in part, written and oral, are hereby overruled.

2. Public Interest. The public interest, convenience and necessity require that the acquisitions and improvements be made.

3. District Described. The district benefited by the acquisitions and improvements and to be assessed to pay the costs and expenses thereof, and the exterior boundaries thereof, are as shown by a map thereof filed in the office of the City Clerk, which map is made a part hereof by reference thereto.

4. Engineer's Report Approved. The Engineer's Report as a whole and each part thereof, are hereby approved and confirmed to wit:

- (a) the plans and specifications for the proposed improvements;
- (b) the maps and descriptions of the lands and easements to be acquired, if any;
- (c) the engineer's estimate of the itemized and total costs and expenses of the acquisitions and improvements, and of the incidental expenses in connection therewith;
- (d) the diagram showing the assessment district and the boundaries and dimensions of the respective subdivisions of land within the district;
- (e) the assessment of the total amount of the costs and expenses of the proposed acquisitions and improvements upon the several subdivisions of land in the district in proportion to the estimated benefits to be received by the subdivisions, respectively, from the acquisitions and improvements, and of the expenses incidental thereto;
- (f) A proposed maximum annual assessment upon each of the several subdivisions of land in the district to pay costs incurred by this City and not otherwise reimbursed which result from the administration and collection of assessments or from the administration or registration of any associated bonds and reserve or other related funds.

When any portion or percentage of the costs and expenses of the acquisitions and improvements is to be paid from sources other than assessments, the amount of such portion or percentage shall first be deducted from the total estimated cost and expenses of the acquisitions and improvements, and the assessment shall include only the remainder of the estimated cost and expenses.

5. Engineer's Report Reference. Final adoption and approval of the Engineer's Report as a whole, and of the plans and specifications, maps and descriptions of the lands and easements to be acquired, estimate of the costs and expenses, the diagram and the assessment, as contained in the Engineer's Report, as hereinabove determined and ordered, is intended to and shall refer and apply to the Engineer's Report, or any portion thereof, as amended, modified, revised or corrected by, or pursuant to and in accordance with, any resolution or order, if any, heretofore duly adopted or made by this Council.

6. Benefits Determined. Based on the oral and documentary evidence, including the Engineer's Report, offered and received at the protest hearing, this Council expressly finds and determines (a) that each of the several subdivisions of land will be specially benefited by the acquisitions and improvements at least in the amount, if not more than the amount, of the assessment apportioned against the subdivisions of land, respectively, and (b) that there is substantial evidence to support, and the weight of the evidence preponderates in favor of, the aforesaid finding and determination as to special benefits.

7. Improvements Ordered and Assessments Levied. The acquisitions and improvements be made, and that the assessment to pay the costs and expenses thereof is hereby levied. For further particulars pursuant to the provisions of the Municipal Improvement Act of 1913, reference is hereby made to the Resolution of Intention.

8. Recording Ordered. The City Clerk shall forthwith:

(a) deliver the assessment to the Public Works Director, together with the diagram, as approved and confirmed by this Council, with a certificate of such confirmation and of the date thereof, executed by the City Clerk, attached thereto. The Public Works Director shall record the assessment and diagram in his office in a suitable book to be kept for that purpose, and append thereto his certificate of the date of such recording, and such recordation shall be and constitute the assessment roll herein.

(b) cause a copy of the assessment diagram and a notice of assessment, executed by the City Clerk, to be filed and recorded, respectively, in the office of the County Recorder of the County of Alameda, such notice to be in substantially the form provided in Section 3114 of the Streets and Highways Code of California.

From the date of recording of the notice of assessment, all persons shall be deemed to have notice of the contents of such assessment, and each of such assessments shall thereupon

be a lien upon the property against which it is made, and unless sooner discharged such liens shall so continue for the period of ten (10) years from the date of the recordation, or in the event bonds are issued to represent the assessments, then such liens shall continue until the expiration of four (4) years after the due date of the last installment upon the bonds or of the last installment of principal of the bonds. The appropriate officer or officers are hereby authorized to pay any and all fees required by law in connection with the above.

9. Cash Payment Ordered.

(a) Cash Payment. Under the Act, this Council hereby directs that the owners of property within the Assessment District shall be given written notice of the confirmation of the assessments and of the recording thereof in the office of the Director of Public Works and of the opportunity of such owners to pay all or a portion of the assessments in cash for a period of not less than thirty (30) days.

(b) Collection Officer. The Finance Director of the City is appointed Collection Officer (the "Collection Officer") for the assessments and the person to whom payment of the assessments shall be made, and that the office of the Collection Officer, at 777 B Street, Hayward, CA 94541-5007 is designated as the place at which any payments will be made, and the Public Works Director is hereby relieved of all responsibility for collecting assessments.

(c) Mailed Notices. The Collection Officer shall cause notices to pay assessments to be mailed under Section 10404 of the Act, which notice shall state that bonds will be issued under the Improvement Bond Act of 1915, to represent any unpaid assessments. The mailed notice shall be mailed to each owner of real property within the Assessment District at his or her last known address as the same appears on the tax rolls of the City, or on file in the office of or as known to the Clerk of the Council, or to both addresses if the address is not the same, or to the general delivery when no address so appears.

(d) Published Notice. The Collection Officer shall also cause the notice to be published once a week for two successive weeks (with at least five days intervening between the respective publication dates, not counting such dates) in a newspaper published and circulated in the City.

(e) Proceeds of Collection. The Collection Officer shall establish a fund, separate and distinct from other funds of the City and designated "City of Hayward, Local Improvement District No. 18 (Downtown Sidewalk and Streetscape Rehabilitation) Cash Payment Fund" (the "Cash Payment Fund") into which shall be deposited all sums received from the cash payments. The Cash Payment Fund may be invested by the Collection Officer in lawful investments for the City; provided, however, that the Collection Officer shall be under no obligation to invest any or all of the amounts in the Cash Payment Fund.

In the event that this Council issues bonds for the Assessment District, the moneys in the Cash Payment Fund shall be applied to the acquisitions and improvements for the Assessment District and the Fund shall be closed. If the Council determines not to issue bonds to finance the acquisitions and improvements, the Collection Officer shall return the amounts of cash payments (with any interest thereon) to the persons responsible for paying such cash payments and the Fund shall be closed. The timing of such determinations shall be entirely at the discretion of the Council.

10. Effective Date. This resolution shall be effective upon the date of its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2001

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT

HAYWARD CITY COUNCIL 

RESOLUTION NO. _____

Introduced by Council Member _____

RESOLUTION AMENDING RESOLUTION 01-0970, AS
AMENDED, THE BUDGET RESOLUTION FOR
CAPITAL PROJECTS FOR FISCAL YEAR 2001-02,
RELATING TO AN APPROPRIATION OF FUNDS FOR
THE LOCAL IMPROVEMENT DISTRICT 18 PROJECT,
PROJECT 3829

BE IT RESOLVED by the City Council of the City of Hayward that
Resolution No. 01-097, as amended, the Budget Resolution for Capital Projects for fiscal
year 2001-02, is hereby further amended by approving an appropriation of \$430,000 from
the Redevelopment Agency Fund, Fund 451, to the Local Improvement District 18 Project
Fund, Fund 536.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2001

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

**RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AMENDMENTS TO THE
PROFESSIONAL SERVICES AGREEMENT WITH
BERRYMAN AND HENIGAR FOR LOCAL
IMPROVEMENT DISTRICT 18**

BE IT RESOLVED, that the City Council of the City of Hayward hereby authorizes and directs the City Manager to execute on behalf of the City of Hayward an amendment to the professional services agreement with Berryman and Henigar, for preparation of final plans, specifications and cost estimates by adding an additional \$403,000 for a total not to exceed amount of \$505,000, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2001

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward